



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
JUST.C3/MM/ks (2016) 1019332

***By registered letter with
acknowledgment of receipt***

Subject: Your application for access to documents – Ref GestDem No 2016/479

Dear Madam,

We refer to your request for access to documents, registered on 03/02/2016 under the above mentioned reference number.

You request access to the "EU-US Privacy Shield, the new framework for transatlantic data flows as agreed and announced on February 2, 2016".

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain relate to a Commission procedure in preparation of a possible "adequacy decision" (under Article 25(6) of Directive 95/46/EC), which is still open.

In fact, on February 2 the European Commission announced that the College of Commissioners approved the *political agreement* reached with the United States. However, as indicated at the end of the Commission press release IP/16/216 of 2 February 2016 (http://europa.eu/rapid/press-release_IP-16-216_en.htm), only then has the College mandated "Vice-President Ansip and Commissioner Jourová to prepare a draft "adequacy decision" in the coming weeks, which could then be adopted by the College after obtaining the advice of the Article 29 Working Party and after consulting a committee composed of representatives of the Member States. In the meantime, the U.S. side will make the necessary preparations to put in place the new framework, monitoring mechanisms and new Ombudsman".

A proposed EU-US Privacy Shield adequacy decision is in the process of being drafted. While the Commission aims at an adoption of the decision before the summer, it should be noted that in order to be adopted the Commission has to follow the so-called comitology procedure under which representatives from the Member States have to give a positive opinion on the draft decision with qualified majority.

Disclosure of the documents requested, at this stage, would undermine the protection of the decision-making process of the Commission which must remain free from any possible external pressure. The documents provide the basis for the Commission's assessment.

For these reasons, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 ("institution's decision-making process") applies to this document.

Furthermore, the draft Privacy Shield adequacy decision will be the fruit of negotiations with the US which are still ongoing at technical level. Its disclosure, at this stage, would undermine the confidentiality of these discussions and be detrimental to the atmosphere of mutual trust and good faith that exists between the two parties.

Therefore, also the exception under Article 4 (1) (a) third indent of Regulation (EC) No 1049/20 ("international relations") applies to this document.

As the draft Privacy Shield adequacy decision is entirely covered by the exceptions, no partial access can be granted to the document requested.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,


Tiina ASTOLA